

FILED

MAN

JUL 08 2008

NF

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF ILLINOIS
 EASTERN DIVISION

**MICHAEL W. DOBBINS
 CLERK, U.S. DISTRICT COURT**

IN THE MATTER OF THE) 08CV 3675
 NATURALIZATION OF) JUDGE PALI MEYER
 CLAUDIO EDUARDO SALGADO) MAGISTRATE JUDGE MASON
) EDA

**CLAUDIO EDUARDO SALGADO'S MOTION TO DISMISS PURSUANT TO
 FED.R.CIV.P. 12(B)(6) THE GOVERNMENT'S MOTION TO ALTER OR AMEND
 JUDGMENT**

Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, and any other rule or power the Court deems appropriate in its sound discretion, Claudio Eduardo Salgado moves to dismiss the United States Citizenship and Immigration Service's (USCIS) Motion To Alter Or Amend Judgment pursuant to Rule 59(e) of the Federal Rules of Civil Procedure (Fed.R.Civ.P.), stating as follows:

1. The government's motion states on its face that it is filed pursuant to Rule 59(e) of the Fed.R.Civ.P.
 2. "[A] Rule 59(e) motion must clearly establish either a manifest error of law or fact or must present newly discovered evidence. . . . [I]t is well-settled that a Rule 59(e) motion is not properly utilized 'to advance arguments or theories that could and should have been made before the district court rendered a judgment. . . .'" *Sigsworth v. City of Aurora*, 487 F.3d 506 (7th Cir. 2007). See also, *Obreicht v. Raemisch*, 517 F.3d 489 (7th Cir. 2008).
 3. The government's own motion states that, "In the final stage of preparation for the oath, the applicants are told to provide USCIS with any changes such as name or marital status on form (N-445) **before** the oath is taken and the naturalization certificate is given to the applicant." (Page 2, paragraph 2, lines 5-8) (emphasis added).
 4. The motion goes on to admit that Officer Salgado did "note on the N-445 that he was no longer married to his wife" prior to the ceremony (Page 2, paragraph 2, lines 8-9) on the N-445¹.
 5. There is no allegation of error of fact as it is admitted that Officer Salgado disclosed all relevant facts prior to the naturalization ceremony.
 6. The government further admits that any claim of manifest error of law in this case only arises from the allegedly newly discovered evidence. (Page 3, paragraph 4, lines 7-8).
 7. As the evidence that Officer Salgado was divorced was admittedly disclosed prior to his naturalization ceremony, the government fails to establish the existence of newly discovered evidence or manifest error of law resulting therefrom. It cannot use Rule 59(e)
-
1. The government further admits that due to "an oversight by the naturalization officer, the small note went unnoticed." The size of the note is irrelevant since the form N-445 is as large as the government itself has dictated, since they themselves provide the form.

- to advance arguments regarding Officer Salgado's qualifications post judgment when it had all relevant facts available prior to the ceremony.
8. As such, the government's Motion to Alter or Amend must be dismissed as failing to state a claim upon which relief can be granted pursuant to FRCP Rule 12(B)(6)

Dated: July 8, 2008

Respectfully submitted,

Macarena Tamayo Calabrese
Tamayo Calabrese Associates
4130 W. 26th Street
Chicago, IL 60623
Tel: 773-277-4130

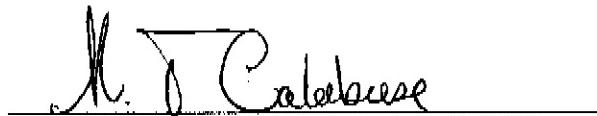
CERTIFICATE OF SERVICE

The undersigned hereby certifies that the following documents:

**CLAUDIO EDUARDO SALGADO'S MOTION TO DISMISS PURSUANT
TO FED.R.CIV.P. 12(B)(6) THE GOVERNMENT'S MOTION TO ALTER OR
AMEND JUDGMENT**

was served by hand delivery on July 8, 2008 to:

Craig A. Oswald
Assistant United States Attorney
219 S. Dearborn Street
Chicago, Illinois 60604



MACARENA TAMAYO CALABRESE
Attorney
4130 W. 26th Street
Chicago, Illinois 60623
773-277-4130

FILEDMHR
NRUNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISIONMICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT

| | | |
|-------------------------|---|------------------------|
| IN THE MATTER OF THE |) | 08CV 3675 |
| NATURALIZATION OF |) | JUDGE PALLMEYER |
| CLAUDIO EDUARDO SALGADO |) | MAGISTRATE JUDGE MASON |
| |) | EDA |

NOTICE OF MOTION

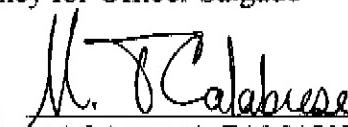
To: Craig A. Oswald
Assistant United States Attorney
219 South Dearborn Street
Chicago, Illinois 60604
(312) 886-9080

PLEASE TAKE NOTICE that on **July 9, 2008 at 9:00 a.m.**, I will appear before **Judge Mason** in the courtroom usually occupied by him in the Everett McKinley Dirksen Building, 219 South Dearborn Street, Chicago, Illinois, or before such other judge who may be sitting in his place and stead, and then and there present **CLAUDIO EDUARDO SALGADO'S MOTION TO DISMISS GOVERNMENT'S MOTION TO ALTER OR AMEND JUDGMENT** at which time and place you may appear.

Respectfully submitted,

MACARENA (RENA) TAMAYO CALABRESE
Attorney for Officer Salgado

By:



MACARENA TAMAYO CALABRESE
Attorney
Tamayo Calabrese Assoc.
4130 W. 26th Street
Chicago, IL 60623
(773) 277-4130

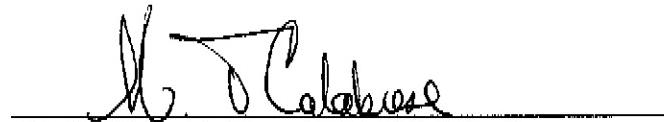
CERTIFICATE OF SERVICE BY HAND DELIVERY

The undersigned hereby certifies that the following documents:

- 1. NOTICE OF MOTION**
- 2. CLAUDIO EDUARDO SALGADO'S MOTION TO DISMISS PURSUANT TO FED.R.CIV.P. 12(B)(6) THE GOVERNMENT'S MOTION TO ALTER OR AMEND JUDGMENT**

was served by hand delivery on July 8, 2008 to:

Craig A. Oswald
Assistant United States Attorney
219 S. Dearborn Street
Chicago, Illinois 60604



SUBSCRIBED AND SWORN TO before me

This 8th day of July 2008



NOTARY PUBLIC
